

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CA 06-92

August 30, 2006

BRUCE KUCHMAS

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. DR-2005-17-G]

V.

HONORABLE JIM D. SPEARS,
JUDGE

DEBORAH KUCHMAS

APPELLEE

REBRIEFING ORDERED

The parties in this case, appellant Bruce Kuchmas and appellee Deborah Kuchmas, were divorced by a decree entered on October 7, 2005, ending their marriage of twenty-one years. Bruce appeals from the decree, contesting only the trial court's directive that he pay \$100 a month in alimony. We order rebriefing.

Rule 4-2(a)(5) of the Rules of the Supreme Court and Court of Appeals provides in pertinent part that the appellant's abstract should consist of an impartial condensation, without comment or emphasis, of such material parts of the testimony of the witnesses and colloquies between court and counsel as are necessary to an understanding of all questions presented to the Court for decision. This rule also requires the testimony of the witnesses to be abstracted in the first person. The appellant's abstract in this case fails on both counts.

The abstract is not in the first person; rather, it is a partial reprint, in question-and-answer form, of portions of the transcript. Mere reprints of the transcribed testimony do not qualify as a proper abstract. *Muldrow v. Douglass*, 316 Ark. 86, 870 S.W.2d 736 (1994); *Widmer v. Taylor*, 296 Ark. 337, 756 S.W.2d 903 (1988).

Our review of the record has also revealed that appellant's attempted abstract was not presented in an impartial manner. As one example, the record shows that appellee moved out of the

marital home to live with a friend, whom she paid \$300 a month plus half of the utilities, while she was also paying half the mortgage on the vacant marital home. The record shows that, when appellee was asked how that worked out for her financially, she replied:

It's - - I don't know. I think when I moved, I was just hoping that it would sell quickly and wouldn't be a problem. My daughter started packing immediately after he left. She's been wanting to move out of that house, and I, more than anything, did it for her, to get out of there.

By contrast, in appellant's reprint of the record, appellee's response to the question is stated simply as "I don't know." The omission of appellee's entire response is misleading and is significant in light of appellant's contention that appellee was wasteful of money.

Although the failure to properly abstract has in the past been considered a bar to consideration of the merits of an argument, this court must now allow rebriefing to cure deficiencies in an abstract. *See Ark. Dep't of Human Services v. Collier*, 351 Ark. 380, 92 S.W.3d 683 (2002). In accordance with Rule 4-2(b)(3), appellant shall have fifteen days to file a substituted brief, abstract, and addendum that complies with Rule 4-2(a)(5).

Rebriefing ordered.

ROBBINS and GRIFFEN, JJ., agree.

